

THE EFFECTIVE DATE OF THIS RESOLUTION IS April 2, 2019
RESOLUTION NO. 19.03

RE: APPLICATION FOR APPROVAL TO REZONE 151.3 ACRES FROM
AGRICULTURAL TO SOLAR FACILITY – COMMERCIAL ZONING DISTRICT
CASE NO. R-18-01 – WHITMORE/BIGGS FORD SOLAR CENTER, LLC

FINDINGS AND DECISION

The property owner, Ralph Whitmore, and leasehold option holder, Biggs Ford Solar Center, LLC, (hereafter collectively referred to as “Applicants”) submitted an Application to rezone three parcels of land¹ containing in the aggregate 151 acres, more or less, from the Agricultural Zone to the Solar Facility - Commercial Floating Zone District.²

The subject site is located on the northwest corner of the Biggs Ford Road and Dublin Road intersection, just outside of the corporate limits of the Town of Walkersville.

The site is zoned Agricultural, with a Comprehensive Plan designation Agricultural/Rural, and adjoins the Walkersville Community Growth boundary which runs along Dublin and Biggs Ford Roads.

The Application contained drawings that showed placement of solar arrays over approximately 96.7 acres of the 151 acres or 64% of the total site acreage.

The drawings also depicted a 25 foot landscaped buffer along 3 sides – adjacent to Dublin Road, Biggs Ford Road and along the property line adjoining the Dublin Manor subdivision. The drawing did not show a buffer along the northern side of the site because there is an intervening strip of land separating the site from the houses along Grossnickle Court.

¹ Tax I.D. Nos. 26-506662, 26-506646 and 26-506670

² See Frederick County Code §1-19-10.700

Exhibits included with the Application indicate the solar panels would be ground mounted, approximately 7-10 feet in height, and aligned in adjacent columns positioned side by side and end to end. A chain link fence is proposed around the perimeter, 6 feet in height.

One hundred percent of the site contains prime farmland soils, and the entire site is located within the Walkersville Priority Preservation Area (PPA).

Farms adjoining the site to the southwest, west, north, and northeast are all participating in agricultural preservation programs. (See Exhibit A hereto, which is incorporated by reference.)

The Application was evaluated by Council Staff in accordance with the provisions of the Frederick County Code §§ 1-19-3.110.3, 1-19-3.110.4, and 1-19-10.700.

§1-19-3.110.4 – Approval Criteria for Zoning Map Amendments

Consistency with the Comprehensive Plan

Staff found the request to rezone the property to Solar Facility Commercial to be inconsistent with both the County's and Town of Walkersville's Comprehensive Plans.

The Application proposed construction of a commercial solar facility on property lying within the Agricultural Buffer depicted in the Town of Walkersville's Comprehensive Plan, which is not consistent with the Town of Walkersville's Comprehensive Plan.

Frederick County's Comprehensive Plan designates the subject property as Agricultural/Rural and the property also lies within the designated Priority Preservation Area. Therefore, construction of a commercial solar facility on the property would be inconsistent with the Frederick County Comprehensive Plan.

Compatibility with Existing and Proposed Development

The existing land uses adjoining the site include agricultural uses to the north, south, and west, and three small scale single family residential subdivisions nearby, one located near the site's

northern boundary, one adjoining the southwest corner of the site, and a third located diagonally off the site's southeast corner across Biggs Ford Road. Construction of a commercial facility covering 96 acres of land with solar panels would not be compatible with the adjoining farming operations and low density/intensity residential uses.

Population Change and Effect on Public Facilities

The development of the site as a commercial solar facility would not change the population of the area as there would be no additional residents or permanent workers associated with the proposed commercial development. As a commercial use, the proposed solar facility will not generate new students and therefore would not affect school capacity. The proposed project would not impact existing library facilities, or existing parks and recreational facilities.

The property is classified No Planned Service (NPS) on the County Water and Sewer Plan. If developed as proposed, the existing residence would continue to use the existing well and septic facilities. The proposed solar facility would not require any additional well/septic facilities.

The site is and would be served by the Walkersville Volunteer Fire Company, which is approximately 2.6 miles from the site via MD 194 and Fountain Rock Road, and Police protection is and would be provided by the Frederick County Sheriff's Office.

The property has approximately 2,760 feet of frontage along Dublin Road, and also has approximately 2,640 feet of frontage on Biggs Ford Road, both of which are 2-lane roads, approximately 20 feet wide with no shoulders. Both roads are under Frederick County's jurisdiction and maintenance, and would appear adequate to serve the proposed commercial solar facility.

Biggs Ford Road is classified as a minor arterial between US 15 and Dublin Road, with a planned future 80 ft. right of way, and a collector road east of Dublin Road heading into the Town

of Walkersville. Dublin Road is classified as a local road with a planned future 50 ft. right of way. However, there are no programmed improvements to Dublin Road or Biggs Ford Road in the current FY 2019-2024 Frederick County Capital Improvements Program (CIP).

§1-19-10.700 – Solar Facility – Commercial Floating Zone District

§1-19-10.700(B) Size and location.

(1) The tract or tracts of land eligible to receive the Solar Facility- Commercial District must be zoned Agriculture and have a Comprehensive Plan land use designation of agricultural/rural.

The site satisfies this requirement.

(2) The tract or tracts of land which is the subject of the floating zone application may not be contiguous to a community growth boundary as designated on the County Comprehensive Plan.

The site adjoins the Walkersville Community Growth Area boundary and therefore does not satisfy this criteria.

(3) The tract or tracts of land which is the subject of the floating zone application shall have a minimum size of 10 acres and shall not exceed 750 acres.

The site is comprised of 151.3 acres and satisfies this criteria.

(4) The tract or tracts of land which is the subject of the floating zone application may not be encumbered by an Agricultural Preservation Easement, located within a Priority Preservation Area (PPA) or a Rural Legacy Area (RL) in the County Comprehensive Plan, or be located within two (2) miles of the centerline of the right-of-way of U.S. Route 15, outside the Frederick City limits from the Pennsylvania border to the Virginia border, that Route having been designated as part of the Journey Through Hallowed Ground National Heritage Area. If the tract or tracts of land subject to the floating zone application are within 2 miles of the centerline of U.S. Route 15, the application may be conditionally accepted and the applicant will have the burden to establish that the proposed project will not be visible from U.S. Route 15.

The site is located within a Priority Preservation Area and accordingly does not comply with this criteria. The property is located within 2 miles of US Route 15. The Application did not provide a viewshed analysis, however the Staff Report established that the site is not visible from US Route 15.

§ 1-19-10.700 (C) – Approval Criteria

(1) Approval or disapproval of a an application for a Solar Facility-Commercial Floating Zone shall be determined through evaluation of the impact of the proposed project upon the adjacent and nearby properties and whether the project will be compatible with, and have no adverse effects on, surrounding properties and a view scapes from public parks and roadways.

The proposed project would adversely impact the view scape from the adjoining and nearby properties and residences, and also from the public roadways bordering the site, and its industrial character would be inconsistent with the rural, agricultural, and open space characteristics of the area surrounding the proposed project.

There are two public parks in the vicinity of the site. The County's Fountain Rock Park is approximately 2,500 feet from the closest array on the site and the Town of Walkersville's Community Park is approximately 2,700 feet from the site. Based on staff visits, the proposed facility would not be visible from either park.

(2) The applicant shall establish that the site is the optimal location for a commercial solar project due to its proximity to facilities to connect the project to the grid, and that the natural features of the site and location minimize the visual impact of the project on surrounding properties and those traveling on public roadways.

The Application contained no information as to how or where the proposed facility would connect with the electric grid. The Application does not address how the natural features of the site and location would minimize the visual impact on surrounding properties and public roadways.

(3) The applicant shall establish that the proposed project will be compatible with the existing and customary uses on adjoining and neighboring properties and in the Agriculture zone in terms of size, scale, style and intensity.

The size and scale of the proposed facility covering a footprint of 96 acres with the arrays, would be significantly larger in size, scale, style, and intensity than either the neighboring residences or the typical agricultural structures and activities such as crop or animal husbandry. Perhaps the most apparent assessment of compatibility for a solar facility concerns the visual

impact. Notwithstanding the proposed landscape buffer, the proposed facility would create a more industrialized landscape than what currently exists with open crop lands and low density single family residences. The high value placed on Frederick County's agricultural lands and their contribution to Frederick County's quality of life is primarily based on the visual aspects of the agricultural landscape itself.

Arguably, from the point of view of overall activity the proposed facility could be considered a passive land use since it would not generate significant traffic or noise.

(4) The applicant shall establish that the project will not be located on prime farmland soils as identified in the USDA Soil Survey for Frederick County.

The site is composed of 100% prime farmland soils, and does not comply with this requirement.

(5) The proposed project, including all areas of disturbances, shall not exceed the lesser of 10% of the tract's or tracts' tillable acreage or 75 acres in size.

The foot print area of the proposed arrays covers 96.7 acres, which is 64% of the total site area of 151.3 acres. The array footprint comprises 70% of the parcels' tillable acreage of 137.6 acres. The proposal exceeds both the 15 acre and 10% thresholds.

(6) A 25 foot deep buffering and screening area shall be provided along common property lines between the Solar Facility and all adjoining residentially zoned property and along all adjacent roadways. The buffering and screening area may include a combination of berms, predominantly evergreen species at least 5 feet in height at the time of planting, or fencing to be determined by the County Council based on characteristics of both the solar facility location and the surrounding neighborhood. The County Council may increase the 25 foot buffering and screening area depth based on characteristics of both the solar facility location and the surrounding neighborhood. The buffering and screening area may be located within the setback areas.

The Concept Plan delineates a 25-foot buffer along the western boundary of the site adjoining the Dublin Manor subdivision. The proposed buffer also extends along the entire frontages of Biggs Ford and Dublin Roads. The buffer begins at an assumed line measured 30 feet from the center line along Biggs Ford Road and 25 feet from the center line along Dublin Road.

The Application does not indicate if berms would be used as part of the proposed buffer. The Concept Plan did not show a 25 foot buffer along the northern boundary. However, the Applicants agreed during testimony to include that buffer if the Application was approved.

Town of Walkersville

The Application was transmitted to the Town of Walkersville for review and comment because the site is adjacent to the Town's boundary and included in the area addressed in the Town of Walkersville's Comprehensive Plan.

After a meeting on October 24, 2018, during which the Application was discussed, the Burgess and Commissioners of Walkersville voted to oppose the zoning request on the basis that the: 1) property is prime farmland; 2) the use is not compatible with the Town's designation of Agricultural/Rural on the Town Comprehensive Plan; 3) the property is within the Town's growth limits and the use will impact Town residents, particularly residents in the Creekside Park development; and 4) the proposed use does not take into account the realignment of Dublin Road shown in the Town Comprehensive Plan.

Planning Commission

As required by the Frederick County Code, the Application was presented to the Frederick County Planning Commission for review and recommendation. Following a public hearing on December 19, 2018, the Frederick County Planning Commission voted to recommend denial of the Application based upon the findings in the Staff Report.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND:

The Council hereby incorporates by reference the findings set forth above.

Upon consideration of the Application to rezone three parcels of land containing in the aggregate 151 acres of land, more or less, from the Agricultural Zone to the Solar Facility – Commercial Floating Zone District, the Applicants’ supporting documents, the testimony received during the public hearing, and documents contained in the record, the County Council makes the following findings:

The Applicants failed to establish in the record sufficient factual or persuasive evidence from which the Council could find that the Application met all of the criteria set forth in the Frederick County Code governing the placement of the commercial solar facility floating zone on to property zoned Agricultural.

The Application is inconsistent with the Frederick County Comprehensive Plan and the Town of Walkersville Comprehensive Plan.

The proposed project is not compatible with the existing and proposed development in the area. The surrounding area is predominantly in agricultural use (except for a few low density single family homes) with a significant number of adjacent and nearby properties participating in Agricultural Preservation programs.

The Application does not satisfy the requirements of §1-19-10.700 because: 1) the site is adjacent to the Walkersville Community Growth boundary; 2) the site is located within the designated Walkersville Priority Preservation Area; 3) 100% of the site contains prime farmland soils; and 4) the size of the proposed project (including all areas of disturbance) greatly exceeds the requirement that the size of the project be the lesser of 10% of the properties’ tillable acreage or 75 acres.

The Applicants failed to meet their burden of proof that the requested rezoning and proposed project satisfied all of the statutory requirements of the Frederick County Code applicable to the Application including §1-19-3.110 and §1-19-10.700.

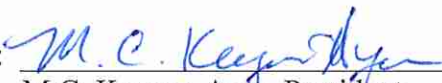
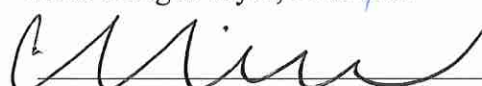
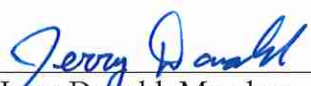
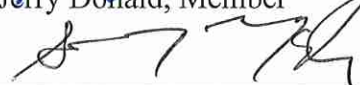

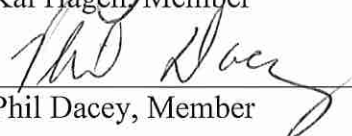
Application No. R-18-01 requesting a rezoning of 151+/- acres from the Agricultural Zone to the Solar Facility Commercial Floating Zone is hereby DENIED.

BE IT FURTHER RESOLVED, the undersigned certifies that this Resolution was approved and adopted on the 2nd day of April, 2019.

ATTEST:

COUNTY COUNCIL OF FREDERICK
COUNTY, MARYLAND


Ragen Cherney
Council Chief of Staff
UK 4/2/19

By: 
M.C. Keegan-Ayer, President

Michael Blue, Vice President

Jerry Donald, Member

Steve McKay, Member

Kai Hagen, Member

Phil Dacey, Member

Council Member Jessica Fitzwater was absent from the hearing and did not vote on the Application.

Exhibit A

